

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -SEPTEMBER 21, 2010- -7:00 P.M.

Mayor Johnson convened the meeting at 7:15 p.m. Councilmember Matarrese led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers deHaan, Gilmore, Matarrese, Tam and Mayor Johnson – 5

Absent: None.

AGENDA CHANGES

(10-433) Mayor Johnson announced that the Public Hearing to Consider Resolution Certifying the Final Environmental Impact Report [paragraph no. 10-450] and Public Hearing to Consider Resolution Approving Tentative Parcel Map [paragraph no. 10-453] would be continued to October 5.

Councilmember Matarrese announced that Considering Taking Action Regarding Calming Traffic [paragraph no. 10-456] was to be placed on the October 5 agenda; requested that the Request for Settlement [paragraph no. 10-441] be addressed in Closed Session.

Mayor Johnson inquired whether having a Closed Session on the item would be possible.

The Risk Manager responded generally, settlements need to be done within two to four weeks; stated if not, the issue would go to trail, which would put the City in a bad economic situation.

Mayor Johnson inquired whether waivers would be needed to discuss the issue in public.

The Risk Manager responded that he cannot go into detail because of confidentiality.

Councilmember Matarrese stated that he cannot make an informed decision or ask questions without the benefit of discussion.

The City Attorney stated the name of the employee and nature of the injury cannot be discussed [in open session]; however, information provided in the staff report can be discussed.

The Risk Manager stated the employee could be identified if he explains what happened.

Mayor Johnson stated Council would not be doing due diligence by making a decision

based on a general statement.

Councilmember Matarrese moved approval of scheduling the Request for Settlement Authority [paragraph no. 10-441] in Closed Session as soon as possible.

Vice Mayor deHaan seconded the motion, which carried by unanimous voice vote – 5.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY & ANNOUNCEMENTS

(10-434) Proclamation Declaring October 6, 2010 as Alameda's Walk and Roll to School Day.

Mayor Johnson read and presented the proclamation to Audrey Lord-Hausman.

Ms. Lord-Hausman thanked everyone who makes the event happen; stated that she looks forward to seeing everyone on October 6th.

(10-435) Presentation of Certificate of Appreciation from the U.S. Census Bureau.

The City Clerk presented the certificate on behalf of the U.S. Census Bureau.

(10-436) Cynthia Wasko announced that Alameda has been named one of the Nation's 100 Best Communities for Young People; provided a press release.

Mayor Johnson thanked everyone for all the hard work in contributing to make Alameda a better place for youth; stated the recognition is great.

CONSENT CALENDAR

Mayor Johnson announced that the Recommendation to Authorize the Interim City Manager to Negotiate [paragraph no. 10-443] and Resolution Approving a Project Operating Agreement [paragraph no. 10-445] were removed from the Consent Calendar for discussion.

Councilmember Matarrese moved approval of the remainder of the Consent Calendar.

Councilmember Tam seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*10-437) Minutes of the Regular City Council Meeting of September 7, 2010. Approved.

(*10-438) Ratified bills in the amount of \$ 1,815,376.97.

(*10- 439) Recommendation to Accept the Quarterly Sales Tax Report. Accepted.

(*10-440) Recommendation to Accept the Quarterly Treasury Report. Accepted.

(10- 441) Request for Settlement Authority of Workers' Compensation Claim #ALAO-004385. Not heard.

(*10-442) Recommendation to Award a First Amendment in the Amount of \$53,385 to Suarez and Munoz Construction, Inc. for the Webster Street/Wilver "Willie" Stargell Avenue Intersection Project – Landscape and Irrigation Improvements, No. P.W. 06-09-18. Accepted.

(10-443) Recommendation to Authorize the Interim City Manager to Negotiate and Execute the Fifth Amended Joint Exercise of Powers Agreement between the City of Alameda and East Bay Municipal Utility District (EBMUD). Accepted.

Councilmember Tam noted that she would recuse herself and left the dais because she is employed by EBMUD.

Councilmember Gilmore inquired how much the EBMUD is paid for system maintenance.

The Public Works Director responded EBMUD is paid over \$750,000 per year for water consumption.

Councilmember Gilmore inquired whether some of the \$750,000 is offloaded to tenants.

The Public Works Director responded tenants pay towards water consumption, which is outlined in leases; stated the \$750,000 is what the Alameda Reuse and Redevelopment Agency (ARRA) pays for water used at Alameda Point; each tenant has a rate that is charged to lease revenue.

Councilmember Gilmore inquired whether Alameda Point meters are separate.

The Public Works Director responded not all meters are separate; stated EBMUD does not read individual meters, only the master meter; EBMUD wants to know when larger tenants would be individually metered.

Councilmember Gilmore inquired whether water leaks are charged to the master meter.

The Public Works Director responded in the affirmative; stated recently, the wharf had leaks; EBMUD's policy states a bill will be reduced by half if a water leak is documented; the other [EBMUD] payment is for ongoing water facility repair and maintenance; the Public Works Department does not have the expertise to maintain and repair water lines; EBMUD is paid anywhere between \$100,000 to \$300,000 per year for repairs; water main breaks have lessened over the years.

Councilmember Gilmore stated EBMUD fixes water main breaks on the main island; inquired whether the service is built into rates.

The Public Works Director responded a full, ongoing water system maintenance rate pays for Alameda Point water main breaks; stated EBMUD is charging twice because the water system is not up to standards; that he does not feel the full consumption rate should be paid because some percentage should take care of ongoing water main repairs; that he will be discussing the matter with EBMUD.

Vice Mayor deHaan inquired what upgrading Alameda Point would entail.

The Public Works Director responded EBMUD would like to work with the City on updating an Alameda Point facilities study done by the Navy fourteen years; the study identified projects, including water tank removal that was part of the fire suppression system; cross contamination is a concern; a water main extension on Fox Avenue has been completed; EBMUD typically adds fast flow preventers to prohibit contamination.

Councilmember Gilmore inquired who would pay for things that need to be done.

The Public Works Director responded ARRA; stated the question for EBMUD is what needs to be done now in light of future Alameda Point redevelopment; putting in improvements that would not be used later would not make sense.

Vice Mayor deHaan moved approval of the staff recommendation.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote – 4. Abstention: Councilmember Tam – 1.

(*10-444) Resolution No. 14489, “Authorizing the Interim City Manager to Submit an Application to the Bay Area Air Quality Management District’s Fiscal Year 2010-2011 Transportation Fund for Clean Air Regional Fund for \$430,000, Provide \$43,000 in Special Transportation Projects and Programs Funds for the Local Match, and Execute all Necessary Documents for an Estuary Crossing Bicycle/College Shuttle.” Adopted.

(10-445) Resolution No. 14490, “Approving a Project Operating Agreement with the East Bay Regional Communications System Authority.” Adopted.

Councilmember Gilmore inquired how much would be left in the fund [City’s Equipment Replacement Internal Service Fund] after paying for the system and whether the City’s computer upgrades would be affected.

The Interim City Manager responded in the negative; stated \$3.1 is projected for the fund this year; staff will determine department charge back costs for the next three to five years once budget forecasts are reviewed.

Councilmember Gilmore moved adoption of the resolution.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote – 5.

CITY MANAGER COMMUNICATIONS

(10-446) Police Department Explorer Program

The Acting Police Chief gave a Power Point presentation.

Mayor Johnson stated having Explorers check out uniforms may be better [than allowing uniforms to be taken home]; inquired what staff would look for in a background check; stated that she does not want people to think that a perfect record is necessary for participation; the proposed program could turn a youth around.

The Acting Police Chief responded a person cannot have criminal convictions; stated the background check would involve talking to family, neighbors, and teachers to ensure that the participant is responsible.

Councilmember Matarrese stated the process sounds more like a reference check rather than a background check, to which the Acting Police Chief concurred.

Councilmember Tam inquired whether less people are going into the police academy.

The Acting Police Chief responded in the negative; stated there is a growing need for police academies.

Vice Mayor deHaan inquired how many explorers would be in the Explorer Post.

The Acting Police Chief responded the Post would have no limit; stated participation would be encouraged; staff would need to ensure that the number of participants is manageable.

Mayor Johnson thanked the Police Department for taking the initiative; stated the program will be good for the youth.

(10-447) Communication on Alameda Branch of the Amateur Radio Emergency Service and Fire Department

The Deputy Fire Chief gave a brief presentation.

Mayor Johnson stated that ham operators are very enthusiastic to participate.

The Deputy Fire Chief stated the Citizens' Emergency Response Team (CERT) and ham operators have a close connection; ham operators are very mobile.

Councilmember Matarrese inquired what is the timeframe for getting the Memorandum of Understanding (MOU) signed and testing the network.

The Deputy Fire Chief responded the MOU should be signed within two weeks; stated capabilities will be tested in the upcoming November [Disaster Preparedness] exercise.

Vice Mayor deHaan inquired whether the network would be capable of overlapping with other cities.

The Deputy Fire Chief responded in the affirmative; stated worldwide capabilities enable reaching out much farther than the normal radius.

Councilmember Gilmore stated that she is glad to see the network happening; local radio operators perform their own drills and have been pushing for a closer relationship with the City; having a volunteer citizens group take on the issue would be very impressive; the City would have a great opportunity to take advantage of home-grown talent.

(10-448) September 3 Correspondence from Alameda County Health Care Service Agency Regarding Emergency Medical Services [EMS] Contract

Speakers: Supervisor Alice Lai-Bitker; Jon Spangler, Alameda; Alex Briscoe, Director of Alameda County Health Care Services Agency (submitted letter); Domenick Weaver, IAFF.

Following Mr. Briscoe's comments, the Interim City Manager stated that she received an email from Dale Fanning, Acting Assistant EMS Director, advising that the \$840,000 annual payment to the County as noted in the staff report has gone up to approximately \$857,000.

Councilmember Gilmore inquired whether the County would not be obligated to provide Advanced Life Support (ALS), but the City would still be able to provide Basic Life Support (BLS) if the County revokes the City's EMS license, to which Mr. Briscoe responded said statement is generally correct.

Councilmember Gilmore inquired whether County counsel contends that voter approval would not be needed if the City annexed into the system; stated the staff report implies that voter approval would be needed.

Mr. Briscoe responded that his understanding is that voter approval would not be needed.

Mayor Johnson inquired whether Alameda residents would pay a fee and not have to vote on the matter if the Joint Powers Authority (JPA) expanded, to which Mr. Briscoe responded in the affirmative.

Mayor Johnson stated that she and Supervisor Lai-Bitker sit on the JPA for lead abatement; she recalls that voters would need to vote to start charging a fee when new cities join the JPA.

The Interim City Manager stated the two issues need to be differentiated; one would be a vote to annex into the EMA District and the other would be to assess property owners.

Mayor Johnson stated that is what she is saying; residents could not be assessed a fee without voter approval.

Councilmember Tam stated that she differentiates the JPA from special assessment districts; inquired whether Alameda is the only City out of the fourteen Alameda County cities not in the EMS District, to which Mr. Briscoe responded in the affirmative.

Councilmember Tam inquired what are the Proposition 218 assessment restrictions; stated that she assumes residents would pay some parcel assessment if the City were annexed; inquired whether the assessment would require a vote of the electorate based upon County legal counsel.

Mr. Briscoe responded Council could take action to annex the City into the EMS District without voter approval.

Mayor Johnson stated that Council is not disagreeing with the annex issue, but questions the assessment issue.

Mr. Briscoe stated that commenting on the assessment issue is not within his scope.

Vice Mayor deHaan stated the initial Contract stated the City would pay the County \$630,000 annually; the amount has escalated to \$840,000.

The Interim City Manager stated the amount has increased to approximately \$857,000 based on the Consumer Price Index (CPI).

Vice Mayor deHaan inquired what is the basis for the increase.

Mr. Briscoe responded the increase is in context of health care costs rising five times the amount of wages.

Councilmember Tam stated page 20 of 30 of the proposed Contract states: "This amount will be paid annually, in quarterly installments to the County to compensate the County for services it provides to Contractor. The amount is \$857,830.98 annually. County may increase this amount subject to any Cost of Living Adjustment imposed by the Alameda County Board of Supervisors on the annual assessment paid by property owners with the Alameda County Emergency Medical Services District. The amount may also be adjusted based on a change in the number of benefit units within the Exclusive Operating Area (EOA)"; the letter [from Alameda County Health Care

Services] states that the City has failed to provide 911 response time information; requested an explanation of protocol for submitting information; stated the City provided information up to a certain point and then stopped.

Mr. Briscoe responded Monday's meeting would be a better time to go into detail of what is required; stated currently, the only outstanding data is the second quarter response times, which was due August 1st; enforcement action is difficult without a Contract.

Councilmember Tam inquired whether the City would be fined \$50.00 per day for every missed deadline if there were a Contract.

Mr. Briscoe responded that he believes so; stated the City enjoys one of the fastest response times in the County; the City's Fire Department has the potential to be one of the best EMS service providers in the County; the County does not have access to enforcement, oversight, or management measurement mechanisms.

Councilmember Matarrese stated having the City be the best EMS service provider in the County is not a potential, but a reality.

Councilmember Gilmore stated the [Alameda County Health Care Services] letter notes that the Fire Department would be required to share an appropriate number of ambulance calls with other ambulance companies that wish to provide services in Alameda if the County removes Alameda's EOA destination; recently, the County contracted with Paramedics Plus for Countywide responses; inquired whether "other ambulance companies" would mean other ambulances that service the area.

Mr. Briscoe responded the Interim City Manager is in receipt of communication from Paramedics Plus and American Medical Response; stated both ambulance companies have stated that cheaper and better service cannot be provided [in comparison to the City's Fire Department].

Councilmember Matarrese stated requiring the Fire Department to share an appropriate number of ambulance calls seems counter productive if the Fire Department can provide better and cheaper service than a private contractor; direction should be given to preserve the service level.

Following Mr. Weaver's comments, Councilmember Gilmore directed that the item come back as an action item at the first Council meeting in October so Council can make a decision; stated that her preference is to preserve service; she would like to know how the \$6.6 million [annual cost for providing the ALS program] is calculated; that she recalls the cost being \$4.2 million in past discussions; inquired where the extra \$2.4 million comes from; stated collection rates were discussed approximately one year ago; inquired what are the ambulance service collection rates; Council has not been satisfied with collections rates and has directed staff to find another collection entity to get a higher [collection] percentage; that she recalls the collection rate was under 50%; the

1980 staff report assumed a 75% collection rate; that she does not think the [current] collection rate is at 75%; residents use County services; the City should find a way to pay for the services; that she is bothered by the three options because the options are presented as financial calculations; information is not provided regarding impacts; inquired what would happen to response times if the County provided ALS services; stated the issue is not just dollars and cents; two-thirds of the City's calls for service are medical; inquired how many calls utilize ALS versus BLS services; stated that she cannot see going to a lesser service if ALS service is utilized; inquired whether more overtime would be needed; inquired what was the glitch in not reporting on the last 911 response calls.

Councilmember Matarrese inquired whether the \$6.6 million [annual cost in providing the ALS program] is the result of \$2.3 million in recovered revenues for ambulance transport services and \$4.3 being contributed from the General Fund, to which the Interim City Manager responded in the affirmative.

Councilmember Matarrese inquired whether the City would lose \$2.3 million in revenue if the City's ambulance service ceases.

The Interim City Manager responded the City would lose \$2.3 million in revenue; however, fire-staffing demands would be less; \$6.6 million is the total cost for the services.

Councilmember Matarrese stated that he agrees with Councilmember Gilmore; the item needs to be brought back with accounting data in order to make a decision.

Councilmember Tam stated the 1983 memo [from the Assistant City Manager] is very helpful; the community cannot afford to have the Contract in a log jammed position for something as important as ambulance service; in 1982, voters voted 80% to establish a paramedic service and bring critical life saving medical treatments to the City; the vital service is worth the added cost, especially since Alameda has the highest percentage of people over 65 years old; BLS is not sufficient; the Fire Department can provide a service level that surpasses the County's response times; the County is offering a solution through annexation; Alameda is the last City holding out on being part of the EMS District; Measure P funds should be used to help pay for the difference between service costs and insurance reimbursements; ALS service is the highest priority for community public health and safety and is a must have; stated that she would like to direct the City to enter into negotiating a contract.

Vice Mayor deHaan stated Council has had prior Closed Session discussions on legalities of the matter, which have not been flushed out; elements need to be understood before moving forward; Alameda's service level is superior; the County believes that the City has fallen into a \$6.6 million hole; legal and financial information is needed; that he is not sure whether said information can be discussed in open session.

The City Attorney stated that she has not seen the County counsel opinion regarding

the County's obligation under State law to provide ambulance services, which specifically includes ALS and BLS services; she is not clear whether County counsel has seen her attorney-client privileged opinion provided to Council; the County is obligated under State law to provide ALS service one way or another; the breakdown has been in negotiating a reasonable cost; the breakdown has extended for five years; granting counties sole authority to set parameters and standards as well as provide EMS services, specifically ALS service, would be anomalous under State law; nothing in State law allows a county to collect service fees from a city.

Mayor Johnson requested that Mr. Briscoe obtain an opinion on the issue from County counsel.

Councilmember Matarrese moved approval of directing staff to meet with County staff, the Mayor, and County Supervisor to flesh out legal opinions on both sides, provide cost and service level breakdowns, report back to Council in Closed Session regarding legal opinions before the next Council meeting, and discuss the issue in open session to provide direction on options with additional points of added clarity regarding finances and detailed service levels.

Councilmember Gilmore stated Council sees the issue as a very high priority; that she understands the matter is a legal issue, but Council needs to get past the matter; health, life, and safety are at stake; the community needs to have the comfort that someone will be there when a 911 call is placed; a Contract needs to be executed.

Councilmember Tam inquired whether Councilmember Matarrese's motion is one of process to get more information, negotiate, and come back to Council.

The City Attorney responded no action could be taken on the item.

Councilmember Matarrese restated that his motion is to give direction to have the County Supervisor, Mayor, and staff flush out financial and legal obligations, bring the matter back to Council in Closed Session to discuss legal obligations and strategies, and come back to discuss and take action on the matter in open session at the next Council meeting.

Councilmember Gilmore stated that she wants the matter to come back sooner rather than later; various funding mechanisms would need to be determined if the Contract goes forward.

Mayor Johnson inquired whether direction is clear, to which the Interim City Manager responded in the affirmative.

Vice Mayor deHaan stated the \$857,000 cannot be taken lightly.

Councilmember Gilmore stated the \$857,000 is not the only issue.

(10-449) Harbor Bay Parkway Bay Friendly Landscape Median Project

April Philips, April Philips Design Works, gave a Power Point presentation.

Councilmember Tam left the dais at 8:51 p.m., Vice Mayor deHaan left the dais at 8:52 p.m., and both returned at 8:53 p.m.

Mayor Johnson inquired whether plants would be planted through cardboard.

Ms. Philips responded small plants would be planted above the cardboard; stated larger plants would be planted through the cardboard.

Mayor Johnson stated landscaping should be changed in other areas also.

Ms. Philips stated Harbor Bay Parkway is committed to having future green and Leadership in Energy and Environmental Design (LEED) certified projects.

Vice Mayor deHaan inquired whether plants would have the same beneficial value [as grass] in absorbing carbon.

Ms. Philips responded more carbon would be absorbed because grass would not be ripped up; stated a carbon sink would be created by having grass decompose into the soil; carbon is released when soil is disturbed.

Councilmember Matarrese stated lawns photosynthesizes carbon dioxide to oxygen; plants would be just as green; inquired whether any gravel or chips would be used, which would take away the photosynthesis, to which Ms. Philips responded the area would have more bio mass and absorb more carbon.

Councilmember Matarrese stated the area has a huge ground squirrel problem; inquired whether cardboard would alleviate the problem.

Ms. Philips responded the cardboard should not make the problem worse; stated a few lavender plants were lost when Peet's Coffee was landscaped.

REGULAR AGENDA ITEMS

(10-450) Public Hearing to Consider Adoption of Resolution Certifying the Final Environmental Impact Report; Adopting Findings and a Statement of Overriding Considerations, and Adopting Mitigation Monitoring Program; Adoption of Resolution Amending the General Plan; Introduction of Ordinance Amending the Zoning Ordinance; Adoption of Resolution Upholding the Planning Board Resolution to Deny PLN 08-0160, and Approval of a Settlement Agreement Pertaining to the Redevelopment of Property Located at 2229 Clement Avenue.

Continued to October 5, 2010.

(10-451) Public Hearing to Consider Introduction of Ordinance Amending Municipal Code Sections 30-17.9 (Requests for Incentives or Concessions for Sites with a Commercial or Mixed Use Zoning Designation) and 30-17.10 (Incentives or Concessions Defined) of Section 30-17 (Density Bonus Ordinance) of Chapter XXX (Development Regulations Article 1 Zoning Districts and Regulations) that Allows Caps or Limits on Concessions and Incentives for Density Bonus Projects on Sites with a Residential General Plan or Zoning Designation. Introduced.

The Planning Service Manager gave a brief presentation and outlined acceptable changes proposed by the Alameda Architectural Preservation Society (AAPS).

Mayor Johnson stated ensuring that the lot size reduction is as clear as possible would be good.

Speaker: Christopher Buckley, AAPS.

Mayor Johnson inquired whether lot coverage would be left at 40%, to which the Planning Services Manager responded in the affirmative.

Vice Mayor deHaan inquired whether setbacks would be left at 40% also, to which the Planning Services Manager responded in the affirmative.

Mayor Johnson stated three feet is not that much and should be the minimum.

The Planning Services Manager stated a developer would not be prevented from requesting a waiver; the idea is to direct developers towards waivers that staff would consider favorably.

Councilmember Matarrese stated having two adjacent, nonconforming properties could end up with a foot and a half setback; an absolute number is needed.

The Planning Services Manager stated a five-foot minimum is already in the Code; the Zoning Code establishes the minimum standard; waivers of any standard can be requested under State law; State law gives very little leeway to say no; the concession and incentive list is steered towards waivers or standards that staff would be most comfortable with; heights are not on the list because staff does not want to encourage tall buildings.

Councilmember Matarrese stated older neighborhoods have all wood houses close together; averaging side yards with an empty lot in between would end up with close houses, which would become a health and safety issue; identifying a five-foot minimum would show that the City is not interested in averaging out.

The Planning Services Manager stated the second reading [of the ordinance] could clarify that reducing the minimum side yard setback beyond the existing standard is not something the City is interested in doing at all.

The City Attorney stated Density Bonus Law allows a developer to get a certain number of incentives or concessions; the number of incentives and concessions is limited; saying no to incentive or concession requests is difficult; the proposed ordinance provides some guidance; waivers are different.

Councilmember Matarrese stated the proposed ordinance should guide away from having houses a foot apart.

The City Attorney stated the provision could be struck entirely.

Mayor Johnson concurred that the provision be struck.

Councilmember Tam moved introduction of the Ordinance as corrected.

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote – 5.

(10-452) Public Hearing to Consider Resolution No. 14491, “Adopting General Plan Amendment (PLN10-0041) to Amend the General Plan Land Use Diagram to Change the Designation for One .085 Acre Parcel Located at 709 Lincoln Avenue (APN 073 041801400) from Community Commercial to Medium Density Residential.” Adopted; and Introduction of Ordinance Amending Ordinance No. 1277, N.S. to Rezone Approximately .085 Acres Located at 709 Lincoln Avenue APN 073 041801400 from CC-Community Commercial Zoning District, to R-5, General Residential Zoning Designation. Introduced.

The Planner I gave a brief presentation.

Speaker: Kathy Moehring, West Alameda Business Association.

Mayor Johnson stated that she completely understands Ms. Moehring’s comments regarding the issue of mixed-use neighborhoods.

Councilmember Matarrese stated that he does not have a problem with the staff recommendation; however, General Plan Policy 2.4.b needs to be reviewed; having a traditional residential next to industrial use area that pays good taxes is a huge conflict; Alameda has had the benefit of businesses moving to the City from Emeryville because of said problem; General Plan Policy 2.4.b is heading the City in the wrong direction.

Mayor Johnson stated the project involves a house that has been at the location since 1910.

Councilmember Tam moved adoption of the resolution and introduction of the ordinance.

Vice Mayor deHaan seconded the motion, which carried by unanimous voice vote – 5.

(10-453) Public Hearing to Consider Adoption of Resolution Approving Tentative Parcel Map No. 9876 Planning Application No. PLN09-0185 – a Parcel Map for the Proposed Subdivision of the Site at 2318 Pacific Avenue into Two Parcels.

Continued to October 5, 2010.

ORAL COMMUNICATIONS, NON-AGENDA

None.

COUNCIL REFERRALS

(10-454) Consider Establishing a Citywide Project Labor Agreement (PLA).

Councilmember Matarrese stated a Citywide PLA would be for projects that receive a taxpayer subsidy in the form of money or public land; the former Naval Base has a homeless collaborative and veterans' service which should be considered as the first source in formulating a PLA.

Councilmember Gilmore suggested checking with the County to benefit from research already done.

Speaker: Andreas Cluver, Alameda County Building Trades Council.

Councilmember Matarrese moved approval of reviewing templates, looking at model compatibilities or leading with the County, and having a report come back to Council within sixty days to advise how long the matter would take.

Vice Mayor deHaan stated having a PLA would not make a good deal for the City.

Councilmember Tam seconded the motion.

Under discussion, Councilmember Tam inquired whether direction is to have the Interim City Manager or staff comes back to Council in sixty days after meeting with labor organization representatives and obtaining the County template.

Councilmember Matarrese clarified that the motion is to look at the County template and other templates and come back to Council with an update within sixty days.

Councilmember Tam seconded the clarified motion, which carried by unanimous voice vote – 5.

(10-455) Direct Staff to Hold a Workshop on the Brown Act; Request that the City Auditor Perform an Audit of the Books and Records, Including, But Not Limited to, Legal Bills, Costs, Technology (Hardware and Software) and Employee Time Expended in the Investigation of Councilmember Tam; and Terminate the Legal Contract for the Matter.

Councilmember Gilmore gave a brief presentation.

Vice Mayor deHaan stated most Councilmembers understand the Brown Act extremely well; that he is confident in his understanding the Brown Act; State mandates require Council and Boards and Commissions to take a refresher course every two years; that he does not feel the need for additional training unless interpretation problems exist.

The City Attorney stated the City Attorney's office offers Brown Act training to all Boards and Commissions; concurred with Councilmember Gilmore regarding the League of California Cities' ability to provide a low-cost presentation; however, a presentation by the City Attorney's office would be at no cost.

Mayor Johnson inquired whether Boards and Commissions take refresher courses every two years, to which the City Attorney responded in the affirmative.

Vice Mayor deHaan stated the Brown Act safeguards the public; that he takes exception if someone thinks that he does not understand the Brown Act.

Councilmember Gilmore stated she is not bringing the matter to Council as a personal attack on what Council knows or does not know; lately, the Brown Act has been the subject of much discussion; the workshop would not only be useful to Council, Boards and Commissions, and staff, but the public also; training provided by the City Attorney's office is not available to the public; the workshop could take care of the entire population.

Mayor Johnson suggested that the City Attorney come back to Council with an idea; stated the public may be curious; inquired whether Councilmember Gilmore is requesting a workshop for City officials and the public.

Councilmember Gilmore responded that she is requesting a public session; members of the public would prefer not to have the City Attorney's office perform the training, which is why she is requesting that Terry Francke or the League of California Cities provide a workshop.

Vice Mayor deHaan concurred with Councilmember Gilmore regarding the public's concern with the Brown Act; stated a public briefing would be worthwhile in order to understand constraints; perhaps a half hour presentation at a Council meeting would be good.

Councilmember Matarrese stated that he does not have any problem with a workshop,

particularly for the public; he feels that he has been trained on the Brown Act; that he has been provided with materials from noted State experts; having materials available for the public, rather than having a road training, would be valuable; that he would like to have the City Attorney come back with a public educational workshop plan, sighting reference materials, in addition to reviewing case law; having the City Auditor check the bills is perfectly appropriate; Mr. Colantuono said that he has not seen a letter [from Councilmember Tam's attorney]; the matter will come back to Council after the letter is reviewed which would be the end of the matter since Council will not be pursuing civil litigation; at that point he does not have any problem with the Contract ending.

The City Attorney stated terminating Mr. Colantuono's Contract with the City would be in violation of the City Charter; the Charter gives the City Manager the authority and power to investigate any City official; Section 7-3 states that Council cannot interfere with a City Manager's duties or obligations; the matter was discussed at the September 9th Special City Council meeting; Mr. Colantuono's Contract is one contract; the investigation of Councilmember Tam is not a separate contract; that she would not recommend terminating Mr. Colantuono's services; Council should refrain from doing such a thing.

Councilmember Gilmore inquired whether Mr. Colantuono has a general contract and does not provide specific service descriptions and costs each time.

The City Attorney responded Mr. Colantuono always provides specific service descriptions and costs; stated the City Auditor does not need to be engaged; an audit would not show how much has been spent on internal staff time; that she can advise Council and the community how much has been spent over the last six months.

Speaker: Jon Spangler, Alameda.

Vice Mayor deHaan stated the City has remedied the problem noted by Mr. Spangler [Police Department's failure to provide information]; the public's curiosity has been heightened; having the public understand Brown Act requirements is important; inquired whether anyone has asked the City Attorney how much money has been spent [on investigation of Councilmember Tam].

The City Attorney responded in the negative; stated that she will personally provide the information to Council.

Councilmember Tam stated a Public Records Act request shows that Mr. Colantuono's invoices from March through August totaled \$77,000; inquired whether said amount is accurate.

The City Attorney responded the amount may or may not be accurate; stated the response to the referenced Public Records Act request provided the monthly summaries of the total amount of services; Mr. Colantuono's services to the City are in other areas, which has been the case for over a decade.

Councilmember Tam stated a reporter posed a question to the City Attorney regarding how much has been spent on the investigation; the article quoted the City Attorney as saying “that is privileged information and not available to the public.”

The City Attorney stated that she has never had a conversation with anyone in the press regarding the matter; she has not read the referenced article but would be very interested in reading it; no one in the community has asked her how much has been spent [on the investigation] and she cannot imagine being quoted when she has never had such a conversation.

Councilmember Tam inquired whether the City Attorney had a conversation with Ms. Ellison, to which the City Attorney responded in the negative.

Councilmember Matarrese stated having a Brown Act educational workshop would be a good idea; an accounting of money spent on the investigation should be requested; moved approval of directing the City Attorney to 1) come back with an educational workshop proposal for the public, interested Councilmembers, Boards and Commissions; 2) provide an accounting of the legal, hardware, and software costs expended on the investigation of Councilmember Tam.

Councilmember Gilmore requested that the motion include accounting of staff time.

Mayor Johnson suggested that the motion include accounting to the extent possible.

Vice Mayor deHaan stated some people have the understanding that Council has control over the issue [of terminating contracts]; inquired whether the City Attorney has sought other interpretations and is comfortable that the Charter's intent is not to give Council the authority or power to terminate contracts.

The City Attorney responded in the affirmative; stated giving the City Manager power, authority, and duty to investigate a Councilmember wrong doing while allowing Council or an individual Councilmember to withdraw funding and resources would be anomalous; the situation is akin to the Watergate investigation and firing of Archibald Cox.

Vice Mayor deHaan stated the issue is one of checks and balances.

Councilmember Matarrese stated his motion purposefully leaves that off [contract termination]; this is a request for information.

Councilmember Gilmore stated the City Attorney has made it clear that Council cannot terminate the Contract; requested an accounting [of Mr. Colantuono's services] and follow up accounting until the matter is concluded.

Vice Mayor deHaan seconded the motion, which carried by unanimous voice vote – 5.

(10-456) Consider Taking Action Regarding Calming Traffic on Residential Streets that Have Become Overburdened, Used as "Cut-Throughs" or Experience Other Traffic Problems.

Referral was to be placed on October 5, 2010 agenda.

COUNCIL COMMUNICATIONS

(10-457) Consideration of Mayor's Nominations for Appointment to the Housing Commission, Library Board, and Planning Board.

Mayor Johnson nominated Fayleen Allen for appointment to the Housing Commission and Nancy Lewis for appointment to the Library Board; continued the Planning Board nomination.

Speaker: Jon Spangler, Alameda.

(10-458) Councilmember Gilmore stated that she attended the School District's workshop regarding the parcel tax; encouraged the public to become engaged and attend the workshops; stated the School District's funding crises is not just a school issue, but a community issue; the community needs to come together to solve or aid the funding crises; that she will do everything that she can; schools are a vital part of the City's infrastructure; the community will not function well without supporting the schools.

(10-459) Councilmember Gilmore stated Council has asked for performance plans from Council's direct reports [Interim City Manager, City Attorney, and City Clerk]; one was due by tonight's meeting; that she has not received the performance plan; Council cannot schedule performance reviews of Council's direct reports; that she wants to know what is the hold up.

(10-460) Vice Mayor deHaan stated a lot of [election] surveys are being done; requested that the City Clerk provide information on the source of the surveys.

ADJOURNMENT

There being no further business, Mayor Johnson adjourned the meeting at 10:05 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.